

BY EMAIL AND ELECTRONIC SUBMISSION

Clerk's Office California Air Resources Board 1001 I Street, Sacramento, CA 95814 Email: cotb@arb.ca.gov

September 13, 2021

XTRA Lease provides these comments on the California Air Resources Boards' *Proposed Amendments to the Airborne Toxic Control Measure for In-Use Diesel Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate* (the "Proposed TRU Regulations"). XTRA Lease is a leading provider of over-the-road trailers for rent and lease in the United States, offering a fleet of about 85,000 trailers for rent and lease, including dry vans, flatbeds, reefers, local cartage vans, storage trailers and specialty equipment through more than 47 locations, including six locations in California.

XTRA Lease appreciates the outreach that the California Air Resources Board ("CARB") staff has undertaken leading up to this proposed rulemaking. While we generally agree with CARB's approach in the Proposed TRU Regulations with respect to TRU lessors and lessees, we propose several clarifying changes as outlined more specifically on the following pages. Our suggested revisions to the text of the Proposed TRU Regulations can also be found on Attachment 1 to this document.

Sincerely,

Andrew Krueger

Vice President & General Counsel

XTRA Lease LLC

Specific Comments

Comment Number 1: While XTRA Lease would not rent or lease a non-compliant TRU-equipped trailer to a lessee we knew would operate in the State of California in violation of CARB's regulations, XTRA Lease cannot control what our lessees do with leased trailers once the trailer is in the lessee's possession. XTRA Lease intends to do its part to comply with the Proposed TRU Regulations and contractually requires its TRU lessees to do the same, but we cannot guarantee that our TRU lessees will always operate TRU trailers in compliance with the Proposed TRU Regulations. In order to better align the Proposed TRU Regulations with current business practices between TRU lessors and lessees, we request that Section 2477.19 of the Proposed TRU Regulations be revised to clarify that lessors will not have liability for violations caused by TRU lessees.

Comment Number 2: XTRA Lease agrees with CARB's proposed approach in Section 2477.12(a)(1)(A) to allow TRU lessors to delegate certain compliance responsibilities to lessees; however, to better align with current practices between TRU lessors and lessees, XTRA Lease requests that additional subsections of Section 2477.5 be included in the list of responsibilities that may be delegated to lessees, as further described below. As noted above, XTRA Lease cannot control what our lessees do with leased trailers once the trailer is in the lessee's possession. We therefore request the ability to delegate the following additional compliance responsibilities to our lessees:

Section 2477.5(a). Refrigerant Requirements. While XTRA Lease always maintains its equipment to include the required refrigerant and keep the required OEM label affixed, we cannot ensure that a lessee will properly maintain the unit once in their possession. We therefore request the ability to delegate refrigerant responsibilities to our lessees.

2477.5(c). In-Use Performance Standards. Similarly, while XTRA Lease would not rent or lease non-compliant TRU-equipped trailer in California, we cannot control what a lessee does with our equipment once in their possession. We therefore request the ability to delegate in-use performance requirements to our lessees.

Comment Number 3: XTRA Lease requests clarification on the language in paragraph (3) of the definition of "Owner" in the Proposed TRU Regulations. In particular, the presumption applied to TRU lessors appears to conflict with the delegation provisions in Section 2477.12(a)(1)(A) discussed above. As currently drafted, the definition of "Owner" would allow all of Section 2477.5 to be delegated to a TRU lessee if certain conditions are met, while Section 2477.12(a)(1)(A) only permits the delegation of certain subsections of Section 2477.5. XTRA Lease does not take issue with the approach provided in Section 2477.12(a)(1)(A) (subject to our Comment Number 1 above), but we recommend modifying the definition of "Owner" as set forth on Attachment 1 hereto to clarify how these provisions are intended to work together.

Comment Number 4: XTRA Lease requests clarification on the need for the additional reporting requirements applied to hybrid electric TRUs under Section 2477.5(f)(2) of the Proposed TRU Regulations. XTRA Lease's current hybrid electric TRU engines do not collect the additional information required under this provision, and we do not have an ability to provide

access to this information to CARB or our rental or lease customers. The additional reporting requirements appear to disincentivize the use of hybrid electric TRU technology, as compliance with such requirements would necessitate expensive modifications to our hybrid electric fleet.

Comment Number 5: XTRA Lease notes that the 30-day time period for affixing new CARB IDNs and compliance labels in Sections 2477.5(g)(6) and 2477.5(i)(3), respectively, of the Proposed TRU Regulations is problematic in the context of leased TRU-equipped trailers. XTRA Lease's trailers are dispersed throughout the country and are under the control of our lessees, and we do not have a mechanism for delivering labels to our lessees or ensuring that they are properly affixed within the proposed 30-day time period.

We request that CARB consider implementing a long-term compliance labeling program under which a TRU owner would be permitted to pay a larger fee in exchange for a compliance label valid for a longer period of time. This approach has been successful in other states that permit vehicle owners to purchase vehicle registrations with longer or permanent intervals to better accommodate the logistical burden of updating registrations for commercial vehicles. California has also successfully implemented a permanent registration scheme for recreational trailers.

If a long-term labeling program is not offered, we request that the compliance labeling time period be extended to 90 days. California Vehicle Code Section 34505.5 requires motor carriers to perform a safety inspection of each trailer they operate in California on 90-day intervals. XTRA Lease often assists its lessees in coordinating these safety inspections. XTRA Lease suggests that CARB adopt a similar 90-day period to affix new CARB IDNs and compliance labels on refrigerated trailers to enable such labeling to be performed as part of the required California safety inspection. This approach would give lessors the necessary time to coordinate the delivery of labels to their motor carrier lessees and would ensure that each TRU is properly labeled by knowledgeable equipment inspectors as part of the routine safety inspection process.

Additionally, XTRA Lease requests that the new compliance labeling requirements in the TRU Regulations apply only to Model Year 2023 and newer TRUs. XTRA Lease's existing fleet of TRU-equipped trailers is not equipped with the GPS tracking technology that would be required to enable timely compliance with the proposed compliance labeling requirements.

Comment Number 6: Please confirm that the reporting requirements in Section 2477.6 are intended to apply only to truck and tractor owners, and not to trailer owners or lessors. As a trailer lessor, XTRA Lease does not have and cannot obtain access to the information required to be reported under Section 2477.6(b). The lessee and operator of a TRU-equipped trailer is the only party with access to such information. Because the California Vehicle Code defines "vehicle" broadly to include trailers, we request that Section 2477.6 be revised to clarify that this section only applies to owners of TRU-equipped trucks and owners of tractors operating with a TRU-equipped trailer. We also suggest a corresponding change to the definition of "Vehicle Owner."

Attachment 1

Suggested Revisions to Proposed TRU Regulations

§ 2477.4. Definitions.

(a) For purposes of this TRU Regulation, the following definitions apply:

. . .

"Owner" means, except as modified by paragraphs (1), (2) or (3) below, the person legally holding title (or its equivalent) to the TRU or TRU gen set, or either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle to which the TRU is attached. An owner may also be a driver or operator.

- (1) Banks, other financial lending institutions, or other entities engaged in the act of financing TRUs are not owners, for the purposes of this subarticle unless they otherwise have an obligation to comply with this regulation (e.g., contractually responsible for the maintenance of a TRU under a sales or lease agreement).
- (2) For a TRU-equipped truck or trailer, or TRU gen set owned by the federal government and not registered in any state or local jurisdiction, the owner means the department, agency, branch, or other entity of the United States, including the United States Postal Service, to which the vehicles in the fleet are assigned or which have responsibility for maintenance of the vehicles.
- (3) or a TRU-equipped truck or trailer, or TRU gen set that is rented or leased:
 - (A) The owner shall be presumed to be the lessee rental or leasing entity for purposes of compliance with those subsections of section 2477.5 that may be delegated to a lessee under section 2477.12(a)(1)(A), unless if:
 - 1. The rental or lease agreement is for a period of less than one year; or
 - 2. The rental or lease agreement is for a period of one year or longer, unless the terms of the rental or lease agreement or other equally reliable evidence identifies the party responsible for compliance with State laws that apply to TRUs to be the renting operator or lessee.

. . .

"Vehicle Owner" means the person registered as the owner or lessee of a <u>truck or tractor</u> vehicle by the California Department of Motor Vehicles or its equivalent in another state, province, or as evidenced on the vehicle registration document carried in the vehicle to which the TRU is attached. For example, the owner of the truck or tractor pulling a TRU equipped trailer or container.

§ 2477.5. Requirements for Owners or Owner/Operators.

. . .

(g) TRU Reporting Requirements. The term TRU as used in this subsection (g) refers to MY 2023 and newer TRUs and TRU gen sets, as well as ZE truck TRUs used to comply with section 2477.5(b).

. . .

(6) Within 9030 days of receipt of the CARB IDN, the owner or owner/operator shall permanently affix or paint the CARB IDN on the TRU chassis housing in clear view according to the specifications in section 2477.20(e). Beginning December 31, 2023, the requirements of this subsection 2477.5(g)(6) shall be superseded by the TRU compliance label requirements in section 2477.5(i).

. . .

(i) TRU Compliance Labels. The term TRU as used in this subsection (i) refers to MY 2023 and newer TRUs and TRU gen sets, as well as ZE truck TRUs used to comply with section 2477.5(b).

. . .

- (3) Within 9030 days of receipt of the CARB compliance labels, owners or owner/operators shall affix the labels in clear view, correct side up, un obstructed; and kept and maintained in a manner that retains legibility. The location of the label shall be as follows:
 - (A) Truck and trailer TRUs both sides of TRU chassis housing.
 - (B) Rail car and shipping container TRUs both sides of the TRU.
 - (C) TRU gen sets both sides of gen set housing.

. . .

§ 2477.6. Requirements for Vehicle Owners.

- (a) Beginning December 31, 2022, a vehicle owner shall not operate or cause to be operated in California, a TRU-equipped truck or tractor-trailer equipped with a TRU or TRU gen set, unless the TRU or TRU gen set complies with sections 2477.5(a), (b), (c), and (d).
- (b) Beginning December 31, 2022, a vehicle owner of a TRU-equipped truck or a tractor operating with a tractor-trailer equipped with a TRU or TRU gen set shall (including a TRU lessee), upon request by CARB enforcement personnel, provide the following:
 - (1) Driver's license
 - (2) Truck or tractor registration
 - (3) Trailer registration
 - (4) Bill of lading or freight bill with origin and destination of freight being transported, the consignor (shipper) and consignee (receiver);
 - (5) The company name and contact information of the carrier that dispatched the driver; and
 - (6) The company name and contact information of the business entity (e.g., shipper, freight broker, freight forwarder, or receiver) that arranged, hired, or contracted for the transport of the perishable goods being hauled, subject to the requirements in sections 2477.8, 2477.9, 2477.10, and 2477.11.

§ 2477.12. Requirements for Lessors and Lessees.

- (a) Lessors shall be subject to all of the following:
 - (1) Except as set forth below, the lessor is responsible for the owner requirements set forth in section 2477.5. See the definition of "owner" in section 2477.4 for clarification related to banks and financial institutions.
 - (A) The lessor may delegate the responsibilities under section 2477.5(a), (c), (g), (h), and (i) to the lessee, if the following conditions are met:
 - 1. The lease contract shall show clear delegation of the TRU reporting, operating fee, and compliance label requirements to the lessee;
 - 2. The lessor shall submit third party agreement confirmation information as required under section 2477.20(k) for leased units to CARB at least 10 days prior to the lessee reporting the TRU or TRU gen set to CARB.

- 3. The lessor shall notify the lessee in writing of this delegation.
- (2) The lessor shall not delegate owner requirements for complying with sections 2477.5(a), (b), (e), and (d) to the lessee unless the lessor is a bank or financial institution. Notwithstanding the preceding sentence, nothing in this section 2477.12 shall prevent lessors and lessees from entering into contractual arrangements to allocate responsibility for compliance with any requirements of this TRU Regulation and associated costs.
- (b) Lessees shall be subject to all of the following:
 - (1) If delegated by contract and the lessor has submitted third party agreement confirmation information for leased units to CARB under section 2477.12(a)(1)(A) and notified the lessee of delegation under section 2477.12(a)(1)(A)3., the lessee is responsible for the refrigerant, in-use performance standards, TRU reporting, operating fee, and compliance label requirements of sections 2477.5(a), (c), (g), (h), and (i) and shall complete all of the following:
 - (A) Ensure compliance with the refrigerant requirements set forth in Section 2477.5(a) at all times while the TRU is under the lessee's control, including any reporting requirements thereunder;
 - (B) Ensure compliance with the in-use emission category performance standards set forth in Section 2477.5(c) at all times while the TRU is under the lessee's control, including any reporting requirements thereunder;
 - (C) Report the TRU or TRU gen set to CARB and pay applicable TRU operating fees after at least 10 days of the lessor submitting the third party agreement confirmation information for leased units to CARB, but no more than 30 days after the lessor's notice;
 - (D) Submit a copy of the TRU Certification to the lessor within 30 days after reporting the TRU or TRU gen set to CARB and a TRU Certification is issued; and
 - (E) Affix (attach) the IDN to the TRU or TRU gen set housing within 9030 days in accordance with subparagraph 2477.5(g)(6).

§ 2477.19. Non-compliance and Penalties.

(a) All persons, as defined in section 19 of the Health and Safety Code, found to be in violation of title 13, CCR, sections 2477 through 2477.18 may be cited and subject to the penalty provisions set forth in Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410. Where a violation involves multiple TRUs, TRU gen sets, or TRU engines, there is a separate violation for each such unit.

- (1) For purposes of enforcement, if a TRU, TRU gen set, or applicable facility is cited for non-compliance with this TRU Regulation and neither the owner nor the operator can produce evidence of the party responsible for compliance with State laws, then the owner of the TRU, TRU gen set, or applicable facility in violation shall be liable for any non-compliance; provided, however, that if a TRU is cited for non-compliance with this TRU Regulation and the lessee caused such non-compliance, the lessee, and not the lessor, shall be liable for such non-compliance, and any enforcement actions under this TRU Regulation shall be brought directly against the lessee.
- (b) Failure to keep records, failure to report, or submittal of false information are each separate violations of this TRU Regulation subject to penalty.